

REMARKS

Request for Continued Examination

This amendment accompanies a request for continued examination filed under 37 CFR §1.114 along with the necessary fee under 37 CFR §1.17(e).

Claims

Claims 1-6 and 8-14 are pending in the application with claims 1 and 10 being independent. Claims 1, 5, 10 and 11 have been amended. Claims 7 and 15-18 have been canceled. Reconsideration is respectfully requested.

Claim Rejections – 35 U.S.C. §103(a)

Claims 1-11 and 15-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hite (U.S. Pat. No. 3,230,628) in view of Cronk (U.S. Patent No. 1,860,174). Claims 12-14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hite in view of Cronk and further in view of DiCarlo (U.S. Pat. No. 5,180,388). Claims 7 and 15-18 have been canceled. Applicant respectfully traverses the rejection to independent claim 1.

Claim 1, as amended, defines over the cited prior art or any combination thereof by reciting a measuring device for bone screws having different shaft diameters. The measuring device comprises a surface defining multiple receiving grooves for receiving the bone screws. Each receiving groove includes a length measuring scale for measuring the bone screws. A limit stop is associated with each receiving groove to cooperate with a received bone screw. Each limit stop includes two limiting elements projecting upwardly from the surface at a transverse angle relative to the associated receiving groove. The two limiting elements have a spacing between each other that defines a selectivity with respect to the shaft diameter of the bone screw which can be received in the associated receiving groove. With this selectivity, the measuring device of the present invention as set forth in claim 1 improves the reliability of measurements taken for bone screws having different shaft diameters.

Hite discloses a measuring scale with a surface having a single receiving groove for measuring bone screws. As noted by the Examiner, Hite fails to disclose multiple receiving grooves for receiving bone screws having different shaft diameters, as required by claim 1. Hite only provides a single receiving groove, which can result in errors when used to measure bone screws having different shaft diameters. More specifically, as the transition from screw head to screw shaft varies, different bone screws will sit within the single receiving groove differently such that two bone screws of similar lengths will receive very different measurements. The reason for the variation in measurements is the difference in shaft diameter. When placing bone screws in human bone, precise depth measurement can be critical and the present invention overcomes such variation in measurements by providing two limiting elements projecting upwardly from the surface at a transverse angle relative to the associated receiving groove to define the selectivity with respect to the shaft diameter of the bone screws which can be received in the associated receiving grooves, as required by claim 1.

Cronk teaches multiple receiving notches for receiving rivets of varying shaft diameters. Cronk, however, fails to disclose a length measuring scale associated with any of the receiving notches, as required by claim 1. Instead, Cronk shows a common rivet number scale. In fact, in reviewing the common rivet number scale it becomes apparent that the common rivet number scale does not directly correlate to length in any manner. In one notch, a common rivet number of 35 correlates to the same length of a common rivet number of 6 in an adjacent notch. The Examiner has combined the teaching of multiple receiving notches in Cronk with the teaching of a length measuring scale in Hite to arrive at the present invention as set forth in claim 1. Applicant respectfully submits that there is a lack of teaching, suggestion, or motivation in the references themselves for this combination. Applicant also respectfully submits that even if the combination were proper, the references, when combined, do not teach each and every limitation of claim 1.

If Hite were to be modified by Cronk, as suggested by the Examiner, the intended operation of Hite would be ruined. Cronk requires the use of the rivet number scale to determine a rivet's proper designation, not length, while Hite, on the other hand, requires the use of the length measuring scale to determine a length of a bone screw. As a result, the

Applicant: Knopfle et al.
Serial No.: 10/759,458
Amendment Dated: August 11, 2005
Office Action Dated: May 13, 2005
Page 8 of 9

Examiner's modification of Hite with Cronk is based on impermissible hindsight, not on motivation from the references themselves. In addition, claim 1 recites multiple receiving grooves with length measuring scales associated with each receiving groove. Furthermore, neither Hite, nor Cronk, disclose two limiting elements projecting upwardly from a surface at a transverse angle relative to each of the receiving grooves, as required by claim 1.

In summary, there is no teaching, suggestion, or motivation to combine the teachings of Cronk with Hite to arrive at the present invention as set forth in claim 1. In fact, this combination would ruin the intended operation of Hite. Furthermore, even when combined the references do not teach each and every limitation of claim 1. As a result, Applicant respectfully submits that claim 1 is in condition for allowance. In addition, Applicant respectfully submits that dependent claims 2-6 and 8-9 are also placed in condition for allowance based on their own merits and their dependency to claim 1, and the failure of the references to suggest claim 1.

Applicant respectfully submits that independent claim 10 is also in condition for allowance for the reasons cited above with respect to independent claim 1. In addition, Applicant respectfully submits that dependent claims 11-14 are in condition for allowance based on their merits and their dependency to claim 10, and the failure of the references to suggest claim 10.

Applicant: Knopfle et al.
Serial No.: 10/759,458
Amendment Dated: August 11, 2005
Office Action Dated: May 13, 2005
Page 9 of 9

Applicant believes the application is now in condition for allowance, which allowance is respectfully solicited. Applicant believes that no additional fees are required, except for the fees included in the attached check, if any. In any event, however, the Commissioner is authorized to charge our Deposit Account No. 08-2789 for any additional fees or credit the account for any overpayment.

Respectfully submitted,
HOWARD & HOWARD ATTORNEYS, P.C.

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Date



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CERTIFICATE OF MAILING

I hereby certify that the attached Amendment Accompanying A Request for Continued Examination Under 37 CFR §1.114, Request for Continued Examination (RCE) Transmittal, return post card and check for \$790.00 are being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on August 11, 2005.



Brenda J. Hughes